

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Khari Varner, Tera Strawter, J.K.V., K-
L.V.V., N.S.V., K.T.V.,

Plaintiffs,

v.

Sawnte Strawter, et al.,

Defendants.

Case No. 2:24-cv-00537-JAD-DJA

Order

Before the Court are two of Plaintiff Khari Varner's applications to proceed *in forma pauperis*. (ECF Nos. 8, 9). Because the Court already granted Varner's application to proceed *in forma pauperis*, it denies the two new applications as moot. Tera Strawter has not filed an application to proceed *in forma pauperis* and the minor Plaintiffs have not appeared through counsel as the Court directed in its last order. (ECF No. 6).

Varner also filed a petition for writ of *habeas corpus* under 28 U.S.C. § 2241, which the Court construes as Varner's amended complaint. (ECF No. 10). Because Tera Strawter has not filed an application to proceed *in forma pauperis* and because the minor children Plaintiffs have not appeared through counsel, the Court construes the complaint as being brought only by Varner. Varner alleges Child Protective Services has "hidden" Varner's children in foster care, violating Varner's due process rights. (*Id.* at 2-3, 7). Varner's claims appear to arise under 42 U.S.C. § 1983 (civil rights) and not 28 U.S.C. § 2241 (*habeas corpus*), so Varner's claims are more properly brought on the Court's civil rights form. The Court will thus dismiss the amended complaint without prejudice and with leave to amend. If Varner amends the complaint and chooses to include Tera Strawter and the minor children as plaintiffs to the action, Tera Strawter must file an accompanying application to proceed *in forma pauperis* and the minor children must appear through counsel.

1 **IT IS THEREFORE ORDERED** that Varner's applications to proceed *in forma*
2 *pauperis* (ECF Nos. 8, 9) are **denied as moot**.

3 **IT IS FURTHER ORDERED** that Varner's amended complaint (ECF No. 10) is
4 **dismissed without prejudice** and with leave to amend.

5 **IT IS FURTHER ORDERED** that Varner shall have until **June 17, 2024** to file an
6 amended complaint. If Varner amends the complaint and chooses to include Tera Strawter and
7 the minor children as plaintiffs to the action, Tera Strawter must file an accompanying application
8 to proceed *in forma pauperis* and the minor children must appear through counsel. If Varner
9 chooses to amend the complaint, Varner is informed that the Court cannot refer to a prior
10 pleading (i.e., the original complaint) to make the amended complaint complete. This is because,
11 generally, an amended complaint supersedes the original complaint. Local Rule 15-1(a) requires
12 that an amended complaint be complete without reference to any prior pleading. Once a plaintiff
13 files an amended complaint, the original complaint no longer serves any function in the case.
14 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
15 of each Defendant must be sufficiently alleged. **Failure to comply with this order may result**
16 **in a recommendation to the district judge that the case be dismissed.**

17 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send Varner a
18 copy of this order and of the Complaint for Violation of Civil Rights (Non-Prisoner) form.¹

19
20 DATED: May 17, 2024

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22 

23 DANIEL J. ALBRECHTS
24 UNITED STATES MAGISTRATE JUDGE

25
26
27 _____
28 ¹ This form can be found online at <https://www.uscourts.gov/forms/pro-se-forms/complaint-violation-civil-rights-non-prisoner>.